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EX PARTE OR LATE FILED

December 20, 1996

VIA HAND DELIVERY

Mr. William F. Caton
Acting Secretary
Federal Communications Commission
1919 M Street, N.W.
Washington, D.C. 20554

DEC 20 1996

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

**Re: Interconnection and Resale Obligations Pertaining to Commercial
Mobile Radio Services, CC Docket No. 94-54**

Dear Mr. Caton:

Cellexis International, Inc. ("Cellexis") met late yesterday afternoon, December 19, 1996, with John Cimko and Nancy Boocker of the Wireless Bureau. This notice is being filed today, December 20, 1996, due to the late hour of the meeting.

In yesterday's meeting, Cellexis presented its position with respect to the above-referenced proceeding and shared the attached presentation. In addition, Cellexis discussed the concerns raised in its Formal Complaint and Emergency Motion for Temporary Relief against Bell Atlantic NYNEX Mobile Systems, Inc. et al. filed today. A copy of the Complaint and the Motion are attached for inclusion in the record in the above-captioned proceeding.

Should you have any questions, please feel free to call.

Respectfully submitted,



Alfred M. Mamlet
Colleen A. Sechrest

Enclosures

cc: John Cimko
Nancy Boocker

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CELLEXIS INTERNATIONAL

DECEMBER 19, 1996

BACKGROUND

- BELL ATLANTIC ENCOURAGED CELLEXIS TO LAUNCH IN WASHINGTON-BALTIMORE
- BANM TRIED TO CANCEL CONTRACT
- LITIGATION LED TO NEW CONTRACT
- BANM WILL CUT OFF CELLEXIS 2/19/97
- CELLULAR ONE AND SPRINT SPECTRUM WILL NOT INTERCONNECT

MobileMinutes Local Calling Area



An activation fee of \$30 applies. Toll and airtime free numbers are always 911, *611, *BAM, *226 and 1-800-832-4820. Bell Atlantic NYNEX Mobile reserves the right to terminate service if the account contains a \$0 balance after 90 days. Each credit card prepaid amount expires two months from date of credit card payment. Roaming calls can be placed in all areas where service is available.

Visit any one of our Communications Stores or Kiosks to purchase your MobileMinutes Card.

Communications Stores

- | | |
|---|--|
| Alexandria
3210 Duke Street
Alexandria, VA 22314
(703) 212-8248 | Gaithersburg Square
972 North Frederick Avenue
Gaithersburg, MD 20877
(301) 212-9800 |
| Annapolis
1967 West Street
Annapolis, MD 21401
(410) 573-2340 | Lanham
9700 E. Martin Luther King Blvd., Suite E
Lanham, MD 20706
(301) 459-0660 |
| Arlington
3100 Clarendon Blvd.
Arlington, VA 22201
(703) 522-7777 | Potomac Mills
13020 Worth Avenue
Woodbridge, VA 22192
(703) 497-6200 |
| Baltimore
1420 Joh Avenue
Baltimore, MD 21227
(410) 646-5700 | Reston
11830 Spectrum Center
Reston, VA 22097
(703) 437-2600 |
| Bel Air
2 Bel Air South Parkway
Bel Air, MD 21015
(410) 515-7700 | Rockville
11711 Parklawn Drive
Rockville, MD 20852
(301) 770-4411 |
| Fairfax
11213-M Lee Highway
Fairfax, VA 22030
(703) 352-2355 | Timonium
4 West Aylesbury Road
Timonium, MD 21093
(410) 561-9950 |
| Frederick
1160 W. Patrick Street
Frederick, MD 21702
(301) 695-6000 | Tysons Corner
2059 Chain Bridge Road
Vienna, VA 22182
(703) 847-0077 |

Washington, D.C.
1304 G Street, NW
Washington, DC 20005
(202) 624-0072

Mall Kiosks

- | | |
|---|--|
| Columbia Mall
10275 Little Patuxent Parkway
Columbia, MD 21044
(410) 992-3446 | White Marsh Mall
Silver Spring Road
Baltimore, MD 21236
(410) 627-1200 |
| Laurel Centre Mall
14828 Baltimore Avenue
Laurel, MD 20707
(301) 520-6672 | |

Bell Atlantic NYNEX Mobile

No Annual Contract.

No Deposit.

No Credit Approval.

No Surprises.

Introducing the
MobileMinutes Card

Bell Atlantic NYNEX Mobile

The Prepaid Cellular Calling Service that allows you to pay as you go

The MobileMinutes Card:

Puts You In Control

It's the prepaid cellular service that allows you to control your usage and costs. With the MobileMinutes Card, you decide what you want to spend and how long you want to talk. The MobileMinutes Card will keep track of all your calls for you.

Easy To Use Easy To Get

Activating your cellular phone on the MobileMinutes Card couldn't be easier because there is:

• No Annual Contract

• No Security Deposit

• No Credit Check

Cellular Services You Can Depend On

The MobileMinutes Card gives you the same convenience and quality cellular service that you expect from Bell Atlantic NYNEX Mobile - the leader in cellular service.

Flexible

The MobileMinutes card can adjust to your lifestyle. Service is available in \$50 and \$75 amounts. So depending on your personal calling needs, you may purchase as little or as much as you need.

Smart

The MobileMinutes Card will automatically tell you how much time you have left to talk each time you place a call.

Cellular Services Without Surprises

Sign up for the MobileMinutes Card and know exactly what your costs will be - no surprises. Because when you pay up front, you will never, ever receive a cellular phone bill.

Calls made within your local calling area:

- Local calls - \$1 per minute.
- Long distance - an additional 25¢ per minute.

Calls made outside your local calling area:

- \$1.95 per minute

To Get More MobileMinutes

You will hear a reminder tone four minutes before all the minutes on your card are used up. This tone will be repeated every minute thereafter. So you have time to end your call.

It's now time for you to purchase more MobileMinutes.

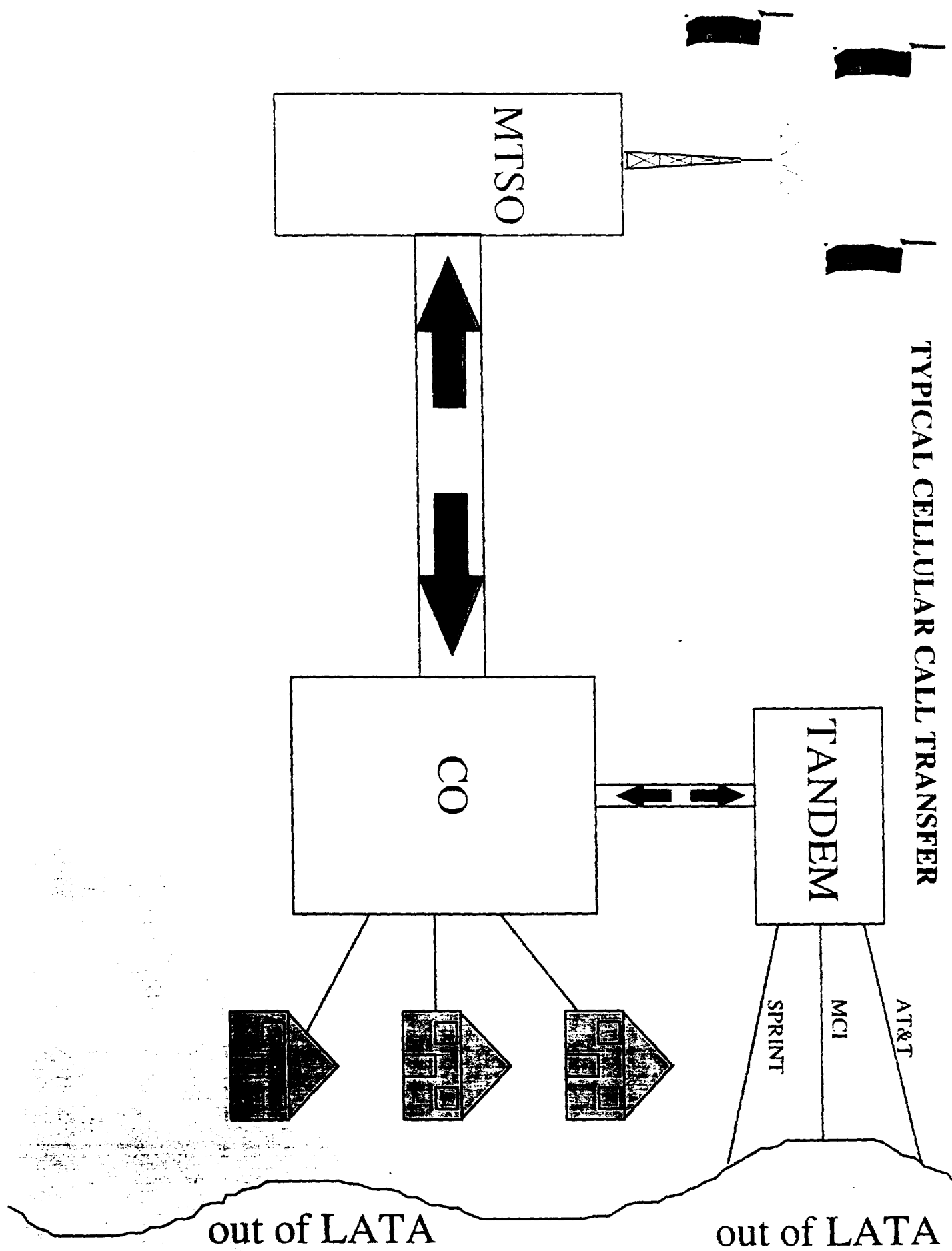
Just dial 1-800-832-4820 or *BAM (*226) from your cellular phone (toll and airtime free). Have your credit card ready and tell us how much time you would like to purchase. We will process your payment on-line and update your balance immediately. Nothing could be easier.

Or if you prefer to pay cash, you can visit any one of our Bell Atlantic NYNEX Mobile Communications Stores listed on the back page to purchase a new card.

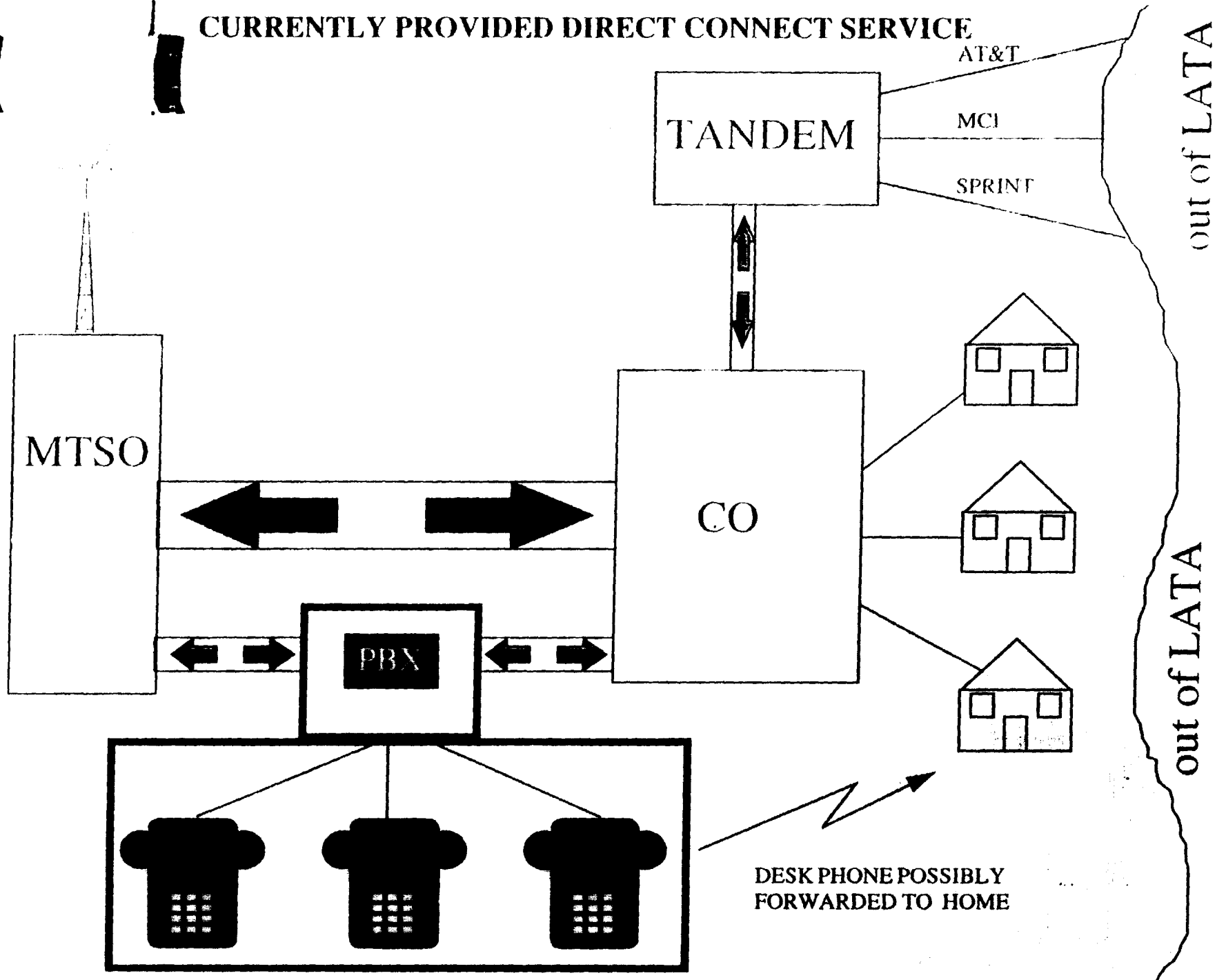
MobileMinutes is another innovative idea from the leader in cellular phone service. Add it all up. The MobileMinutes Card offers convenience, confidence, and it makes controlling your cellular cost easy. It's just one more way we're responding and innovating to meet your cellular calling needs.

Bell Atlantic NYNEX Mobile

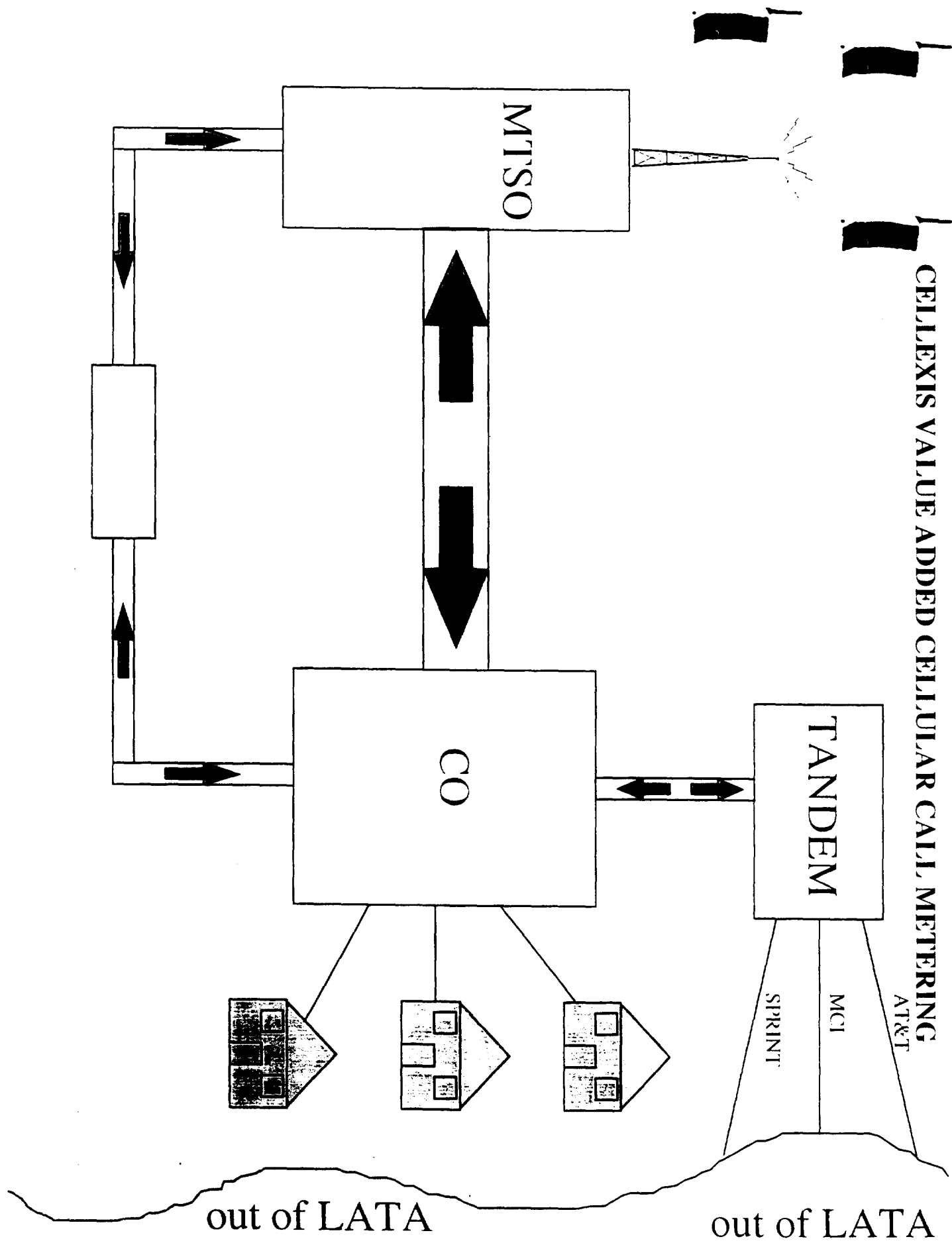
TYPICAL CELLULAR CALL TRANSFER



CURRENTLY PROVIDED DIRECT CONNECT SERVICE



CELLEXIS VALUE ADDED CELLULAR CALL METERING



Mobile Direct www.mobile-direct.com

effective *adjective* (of a person or organization) achieving what you want or trying to do

In today's competitive environment, you need every advantage you can get. That's why we've probably done more research and studies to keep your product working better and longer than any other company in the industry.

the advantage of wireless communication, we have made mobile phone use possible even in powerful environments such as in the factory. Therefore, we will provide a wide range of products and services to support the mobility of the information society.

1. The first step is to identify the problem or question that needs to be addressed. This involves understanding the context and the specific requirements of the task.

2. Next, it is important to gather relevant information and data. This can be done through research, consultation with experts, or by analyzing existing resources.

3. Once the information is gathered, the next step is to develop a plan or strategy. This involves breaking down the problem into smaller, manageable parts and determining the best approach to solve each part.

4. After the plan is developed, the next step is to implement the solution. This involves putting the plan into action and monitoring the progress to ensure that the solution is effective.

5. Finally, it is important to evaluate the results of the solution. This involves comparing the actual outcomes with the expected results and identifying any areas for improvement.

telecommunications

Office of the
Office of the
Office of the

Mobile Direct enables a mobile phone to operate much like an extension of your office phone.

With Strong Mobile Direct, they can take advantage of the best-cost routing capabilities of any cellular long distance calling company available with over 600 carriers.

Let the
H. Vautour

the Mobile Direct portfolio of services is available exclusively from Bell Atlantic Mobile. For more information about the service option that best suits your company's mobile user configuration,

Mobile Direct LD Direct

Your Direct Connection To The World

Mobile Direct

Mobile Direct is a member of the Bell Atlantic Mobile Direct family of Cellular Network Services. It provides access to your long distance carrier and your Private Voice Network (PVN). When calling from your home cellular service area, Mobile Direct is a "TravelLink" area throughout Bell Atlantic Mobile service locations. LD Direct provides you, as a mobile phone user, with the same long distance charges you've negotiated for your company's office phone system. TravelLink is also a member of the Bell Atlantic family of Cellular Network Services.

Mobile Direct is a member of the Bell Atlantic Mobile Direct family of Cellular Network Services. It provides access to your long distance carrier and your Private Voice Network (PVN). When calling from your home cellular service area, Mobile Direct is a "TravelLink" area throughout Bell Atlantic Mobile service locations. LD Direct provides you, as a mobile phone user, with the same long distance charges you've negotiated for your company's office phone system. TravelLink is also a member of the Bell Atlantic family of Cellular Network Services.

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Once Express™, a member of the Bell Atlantic® Mobile Direct™ family of Cellular Network Services, provides recognition of your company's mobile phones at the local Bell Atlantic Mobile Switching Center (MSC). The MSC automatically adds your company's code and prefix for identification to the four or six digit number normally stored by your mobile user. The number then passes on to your LBA, and the appropriate routing is made to the telephone number you have dialed.

• **Direct dialing and office-to-office**
 • **Direct dialing to direct extension, extension, and mobile phones.**
 • **Direct dialing information with the "Direct" option to**
 • **extend your workspace, saving money and time with your**

Employees frequently call company phone locations within a 10-mile radius of area office from a pay telephone. Employees are not to use pay telephones.

Mobile Direct Office Direct

Mobile Direct Office Direct is a new service that lets you use your office phone to call cellular phones. It's a service that lets you use your office phone to call cellular phones. It's a service that lets you use your office phone to call cellular phones.

Mobile Direct Office Direct

Mobile Direct Office Direct is a member of the Bell Atlantic® Mobile Direct Family of Cellular Network Services. Local cellular phones operate like PBX/ComeX extensions and allow direct access to any long distance routing capability your company has negotiated with your long distance carrier. This option is possible because calls are routed over a dedicated circuit your company operates between the Bell Atlantic® Mobile Direct Office Direct and your company's PBX or ComeX.

- Long distance and office networks
- The per-minute termination charges for cellular service are
- Plans for direct access savings from your company's office
- Long distance and office networks
- The per-minute termination charges for cellular service are
- Plans for direct access savings from your company's office

Mobile Direct Office Direct will have the same direct access prefix as the PBX/ComeX phone in your office. Abbreviated dialing is available from mobile phones for office and home.

Local employees frequently use company mobile locations. With their own cellular service, Mobile Direct Office Direct can help them save time and money on their cellular communications.

DISCRIMINATION

- **BANM IS UNLAWFULLY DISCRIMINATING AGAINST CELLEXIS - 202(a)**
 - **BANM MOBILE MINUTES PROGRAM**
 - **BANM MOBILE DIRECT PROGRAM**
- **DISCRIMINATION FINDING WOULD NOT IMPLICATE INTERCONNECTION POLICY ISSUES**

ADDITIONAL BANM VIOLATIONS

- **UNREASONABLE AND UNJUST PRACTICE VIOLATES CELLULAR RESALE POLICY - 201(b)**
- **FAILURE TO MAKE REASONABLE INTERCONNECTION - 332(c)(1)(B)**

REMEDY

- CELLEXIS, AND ITS CUSTOMERS NEED
TEMPORARY RELIEF TO AVOID CUT-OFF

Dated: December 20, 1996

SUMMARY

The Complainant, Cellexis International, Inc. ("Cellexis" or "Complainant") currently provides interstate and intrastate prepaid cellular service to credit-impaired customers in the Washington D.C. - Baltimore area by interconnecting its switch to the Bell Atlantic NYNEX Mobile Systems, Inc. ("BANM") network via a T-1 line. This switch allows Cellexis to verify that its customers have sufficient funds to place the call, eliminating the credit risk. BANM has now decided to terminate Cellexis' interconnection so it can promote its own \$1.00 per minute prepaid service after it eliminates competition from Cellexis' service -- which, at \$.49 per minute peak, \$.39 per minute off-peak, is less than half the BANM price. BANM's decision violates Sections 202(a), 251(a), 202(b) and 332(c)(1)(B) of the Communications Act.

First, BANM's decision to terminate Cellexis' interconnection is discriminatory under Section 202(a) of the Communications Act and the Commission's explicit policy on cellular resale as it : (1) refuses to allow Cellexis to continue offering services that BANM itself has begun to offer (at more than twice the price) through its Mobile Minutes program; and (2) refuses to allow Cellexis to interconnect to its network in the same way that BANM permits other entities to interconnect through its Mobile Direct program.

Second, BANM's decision is a clear violation of Section 251(a), one of the new provisions recently added by Congress in the Telecommunications Act of 1996. Congress required all telecommunications carriers, including CMRS providers, "to interconnect directly or indirectly with the facilities and equipment of other telecommunications carriers." BANM thus has an explicit statutory obligation to maintain Cellexis' interconnection.

Third, BANM's decision is unreasonable under Section 201(b) because it prevents Cellexis from exercising its right, under Commission policy, to interconnect

with BANM's network in ways which do not adversely affect BANM's ability to serve the public. As Cellexis' current interconnection with the BANM network inflicts no harm on BANM or its ability to serve the public, BANM cannot reasonably terminate this arrangement.

Cellexis is aware that the Commission has tentatively indicated that it would not mandate a CMRS switched resale requirement. However, the Commission based this statement on circumstances that do not apply here, including the existence of a highly competitive CMRS market and the uncertainties and costs of requiring CMRS providers to unbundle their services. In particular, Cellexis is faced with a tightly closed market: to date, no other CMRS provider in the Washington-Baltimore area has agreed to interconnect with it even though its existing interconnection arrangement with BANM demonstrates that to do so is neither speculative nor costly. In short, BANM's current position remains unreasonable under Section 201(b).

Fourth, BANM's decision to cut off Cellexis violates Section 332(c)(1)(B) of the Communications Act, which obligates carriers to entertain reasonable interconnection requests. BANM's continued refusal to even discuss Cellexis' request clearly contradicts this express requirement.

Based on the above, Cellexis requests that the Commission issue an order finding BANM's decision to cut off Cellexis to be unreasonable and discriminatory in violation of the Communications Act and Commission policy, and ordering BANM to conduct good-faith negotiations aimed at maintaining Cellexis current interconnection. In a separate motion filed concurrently, Cellexis asks the Commission to order BANM not to terminate the existing interconnection of Cellexis' equipment directly to the BANM network and cut-off Cellexis and its customers until the Commission issues a final decision on this Complaint.

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**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

CELLEXIS INTERNATIONAL, INC.,

Complainant,

v.

File No. E-_____

**BELL ATLANTIC NYNEX MOBILE
SYSTEMS, INC.**

and

CELLCO PARTNERSHIP

and

**WASHINGTON D.C. SMSA LIMITED
PARTNERSHIP**

Defendants.

FORMAL COMPLAINT

I. INTRODUCTION

1. The Complainant, Cellexis International, Inc. ("Cellexis" or "Complainant") provides interstate and intrastate prepaid cellular service to credit-impaired customers in the Washington D.C. - Baltimore area by interconnecting its switch to Defendants', Bell Atlantic NYNEX Mobile Systems, Inc., Celco Limited Partnership, and Washington

D.C. SMSA Limited Partnership (collectively "BANM" or "Defendant") network via a T-1 line. This switch allows Cellexis to verify that its customers have sufficient funds to place the call, eliminating the credit risk. BANM has now decided to terminate Cellexis' interconnection on February 19, 1997 so it can promote its own new \$1.00 per minute prepaid service after it eliminates competition from Cellexis' service -- which, at \$.49 per minute peak, \$.39 per minute off-peak, is less than half the BANM price.^{1/}

2. Accordingly, Cellexis, pursuant to 47 C.F.R. §§ 1.720-1.722, hereby enters a Formal Complaint against BANM for willful violation of Sections 201(b), 201(a) and 332(c)(1)(B) of the Communications Act of 1934, as amended (the "Act"), and for violation of the Federal Communications Commission's policy concerning the resale of cellular communications services.^{2/} In support of this complaint, the following is shown:

II. PARTIES

3. Complainant, Cellexis International, Inc. is an Arizona corporation having the following address:

Cellexis International, Inc.
4625 South Ash Avenue
Suite H-S
Tempe, AZ 85282
(602) 664-1050

^{1/} All new subscribers are offered Cellexis' \$0.49 peak/\$0.39 off-peak rates. Some existing customers remain subscriber under plans at higher rates. Peak times are Monday through Friday, 7:00 a.m. - 9:00 p.m., excluding some major holidays. Activation, programming and monthly access fees apply.

^{2/} In the Matter of Amendment of Parts 2 and 22 of the Commission's Rules Relative to Cellular Communications System, 86 F.C.C. 2d 469, 511 (1981) ("Cellular Resale Decision").

Complainant is a switch-based reseller of interstate and intrastate cellular service in the Washington, D.C. and Baltimore, Maryland metropolitan statistical area ("MSA") and as such is a commercial mobile service ("CMRS") provider and a common carrier.^{3/}

4. Defendant, Bell Atlantic NYNEX Mobile Systems, Inc., a Delaware corporation, Cellco Partnership, a Delaware partnership and Washington D.C. SMSA Limited Partnership, a Virginia partnership have the following address:

Bell Atlantic NYNEX Mobile Systems, Inc.
Cellco Partnership
Washington D.C. SMSA Limited Partnership
180 Washington Valley Road
Bedminster, NJ 07921
(908) 306-7392

Defendant is the wireline cellular mobile telephone licensee for the Washington, D.C. and Baltimore, Maryland metropolitan statistical area ("MSA") and, as such, is a common carrier providing cellular service on an intrastate and interstate basis subject to Titles I and II of the Act, and as a radio licensee subject to Title III of the Act.

5. No suit has been filed in any court or before any other government agency on the basis of the same cause of action set forth herein.

^{3/} 47 C.F.R. § 20.7 defines "unlicensed services . . . such as the resale of commercial mobile radio service" as "mobile services within the meaning of Sections 3(n) and 332 of the Communications Act." Furthermore, 47 U.S.C. § 332(c)(1)(A) states that "A person engaged in the provision of a service that is a commercial mobile service shall, insofar as such person is engaged, be treated as a common carrier for purposes of this Act." See also Implementation of Sections 3(n) and 332 of the Communications Act, Regulatory Treatment of Mobile Services, 9 FCC Rcd. 1411, ¶ 37 (1994) (concluding "that mobile resale service is included within the general category of mobile services as defined by Section 3(n) and for purposes of regulation under Section 332").

III. JURISDICTION

6. The FCC has jurisdiction over this Complaint pursuant to 47 U.S.C. §§ 154(i), 201, 202, 206, 207, 208, 209, 303(r), 309(a), 314, 332(c)(1)(B).^{4/} The Commission also maintains jurisdiction over complaints alleging violations of its cellular resale policy.^{5/}

IV. FACTS

7. Cellexis, based in Phoenix, Arizona, is a switched-based reseller, offering interstate and intrastate prepaid cellular service through BANM's network. From 1987 until 1996, Cellexis was an authorized agent for Bell Atlantic NYNEX Mobile and its predecessor, Bell Atlantic Mobile ("Bell Atlantic"), in the Southwest Region.^{6/}

8. In the course of selling cellular phone service, Cellexis' founder, Douglas V. Fougnyes, noticed that between 20 and 25 percent of the applicants for cellular phone service did not meet the credit criteria established by the carrier. These applicants effectively were precluded from having cellular telephone service. In

^{4/} The Commission also has jurisdiction pursuant to Footnote 213 of the Notice of Proposed Rule Making and Notice of Inquiry in CC Docket No. 94-54, which states: "Until any such generic rules [governing CMRS-CMRS interconnection] are adopted, we will, of course, entertain any request to order interconnection pursuant to Section 332(c)(1)(B) on a case-by-case basis." In re Equal Access and Interconnection Obligations Pertaining to Commercial Mobile Radio Service, 9 FCC Rcd 5408, 5458, n. 213 (1994).

^{5/} See Cellular Marketing, Inc. v. Houston Cellular Telephone Co., 4 FCC Rcd 6667 (1989).

^{6/} Unless otherwise indicated, the facts set forth in this Complaint are verified through the attached Affidavit of Douglas Fougnyes (Exhibit 8).

response to this perceived market need, Mr. Fournies, in early 1993, developed the proprietary technology and system which allows customers to pre-purchase airtime. This prepaid cellular phone system eliminates the credit risk associated with standard cellular service, and thus enables millions of credit-impaired members of the public to receive cellular service. It also meets the needs of others, such as businesses, who wish to limit the cellular calls of its employees, and those who wish to reduce the risk of cellular "roamer" fraud.

9. To operate the Cellexis System, Cellexis must enter into an arrangement with a carrier in each market which allows access to local cellular phone numbers and airtime. Such an agreement was first reached with Bell Atlantic in the fall of 1993, when Bell Atlantic's representatives approved Cellexis' first product, a cellular phone with a chip installed that would shut off the phone when the prepaid airtime had run out. Cellexis introduced this phone into the Phoenix market in early 1994.

10. Subsequently, Cellexis developed a system which did not require any modifications to the cellular phone itself. Bell Atlantic's representatives verbally approved first the analog, and then the digital, versions of this system for use in the Southwest region in connection with Bell Atlantic's "Mobile Direct" product, through which defendant permitted businesses to interconnect PBXs with Bell Atlantic's network in a manner (*i.e.*, through a "fixed use T-1 line") that is virtually identical to the Cellexis System. With Bell Atlantic's knowledge and agreement, Cellexis installed and tested

its T-1 line, and put its System into service in the Southwest. Cellexis initiated this service under its existing agency contract with Defendant.

11. In late 1994 and early 1995, at the same time that Cellexis was introducing its System in the Southwest, it had several discussions with Bell Atlantic about the possibility of forming a strategic alliance. During that time, Bell Atlantic conducted a "due diligence review" of the Cellexis System operation. During these discussions, Bell Atlantic representatives suggested Washington-Baltimore area as a logical market for the Cellexis System, and stated that if Cellexis wanted to enter that market it should do so as a Bell Atlantic Reseller. Pursuant to this suggestion, On March 6, 1995, Cellexis submitted to Bell Atlantic an Application for Reseller Status, together with a copy of Cellexis' business plan for prepaid cellular service.

12. On April 11, 1995, Bell Atlantic sent a letter to Cellexis approving its reseller status for the Washington/Baltimore areas, provided Cellexis supplied a \$150,000 certificate of deposit and two executed copies of Bell Atlantic's standard Wholesale Service Agreements for the two areas. These Agreements were drafted by Bell Atlantic without any input from Cellexis as to any of the contract's terms, except for the economic provisions.

13. Cellexis submitted the executed the Wholesale Service Agreements and the certificate of deposit to Bell Atlantic in June 1995. Subsequently, on June 12, 1995, BANM activated the Cellexis System in the Tucson area, which system included the fixed use T-1 line. Bell Atlantic and Cellexis then entered into discussions concerning